Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Comsat Corporation	)	RM-7913
	)	
Petition for Partial Relief From the Current Regulatory	)	
Treatment of Comsat World Systems' Switched Voice,	)	
Private-Line, and Video and Audio Services	)	

ORDER

Adopted: August 14, 1996 Released: August 15, 1996

By the Commission:

Introduction

1. In this Order, we find that the international telecommunications marketplace has become sufficiently competitive so that we should waive certain tariffing requirements imposed on Comsat World Systems almost a decade ago. Subject to the conditions set forth below, we grant Comsat's request to file tariffs on 14 days' notice, with a presumption of lawfulness, and with minimal cost support data (streamlined tariff relief) for its wholesale space segment services. We do not grant Comsat streamlined tariff relief for television services. In addition, we do not now make any broad findings as to the market power of Comsat or INTELSAT. Nor do we change the finding in our 1985 *International Competitive Carrier* decision that Comsat is dominant in the provision of INTELSAT space segment and television services in the United States.[1] However, our regulatory treatment of Comsat could change if current discussions on restructuring INTELSAT result in enhanced global competition in satellite communications.[2] If appropriate, we will initiate proceedings to propose additional changes in our regulatory treatment of Comsat.

2. On July 1, 1994, Comsat Corporation, through its World Systems division, has filed a petition for partial relief from certain tariffing requirements. Comsat seeks permission to file tariffs

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[1] International Competitive Carrier Policies, 102 F.C.C.2d 812, 838 (1985) ("*International Competitive Carrier*").

[2] INTELSAT is reviewing options for structural changes and ways of becoming more competitive. An Assembly of Parties held August 29 - September 1, 1995 considered recommendations of a working party for the creation of a commercial subsidiary to provide services yet to be finally identified. A new working party was created to recommend measures for definition and implementation of such an arrangement to the Assembly. The United States has presented a proposal for restructuring INTELSAT to the working party. Another Assembly of Parties will be held in April, 1997 to consider recommendations of the working party.

on fourteen days notice, with a presumption of lawfulness, and with minimal cost support for all its INTELSAT common carrier services. PanAmSat, L.P. ("PAS") filed an opposition. Capital Cities/ABC, Inc., CBS Inc., National Broadcasting Company, Inc., and Turner Broadcasting System, Inc. (collectively "the Networks"), Orion Network Systems, Inc., IDB Communications Group, Inc., Keystone Communications, and Reuters Television, Ltd. filed comments. MCI Telecommunications Corporation,[3] Orion, and Comsat replied. We are treating Comsat's petition for partial relief as a waiver request and granting it in part.

Background

3. In 1985 when we adopted *International Competitive Carrier*, Comsat provided five services: space segment services, multi-purpose earth station services, television service, international business service ("IBS"), and end-to-end services. We concluded that Comsat was dominant in the provision of space segment, television services, and multi-purpose earth station services, and non-dominant in the provision of IBS and end-to-end services.[4] Where dominant, Comsat remained subject to the full panoply of regulations promulgated pursuant to Title II of the Communications Act. We stated that based on further analysis or experience, we might in the future scale back or reduce the level of Title II regulation on international dominant carriers.[5] We observed that until fiber optic cables were introduced, satellites were the only cost-effective means of transmitting digital data and television signals. Further, satellites appeared to be the most cost-effective medium for low-density traffic paths ("thin routes").[6]

4. Comsat now argues that its dominant position in 1985 resulted from the way it was originally established. Comsat states that it was created to be the United States Signatory in INTELSAT, whose purpose was to establish a global satellite network. Comsat was formed as a publicly-held corporation with special ownership rights reserved for "authorized carriers," who were permitted to hold up to 50 percent of Comsat's stock and to elect a certain number of Comsat's directors. The Commission permitted the carriers collectively to own up to 50 percent of each earth station. For many years, the Commission maintained "circuit distribution" or "loading" guidelines that required carriers to add satellite and cable circuits in approximately equal proportions. Comsat was generally barred from competing directly against its common carrier customers. Furthermore, the FCC directed carriers providing international services to end users to review and revise their international tariffs as necessary to include average rates that would merge the cost characteristics of satellite and terrestrial technologies.

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3 MCI takes no substantive position on the Comsat petition. It merely cautions the Commission to consider what effect any decision in this case might have on relaxation of tariffing requirements for local access services. In this decision, we do not change any tariffing requirements for local access service.

4 International Competitive Carrier, 102 F.C.C.2d at 822. Space segment services are defined to include Comsat's provision of INTELSAT space segment capacity. Multi-purpose earth station services are no longer provided by Comsat World Systems. *See* n.25, *infra*. Television service includes video and associated audio services. IBS is Comsat's digital private line service. End-to-end services are those switched and other services provided directly to end-user customers.

5 *Id.* at 829.

6 *Id.* at n.63.

5. According to Comsat, circumstances have changed. By the 1980s, all of the major common carriers had divested themselves of their ownership in Comsat, either voluntarily or as a result of Commission action. The FCC started to license small earth stations to individual common carriers for IBS, then allowed carriers generally to own and operate earth stations independently of Comsat.[7] The Commission even allowed non-common carriers to own earth stations interconnected with INTELSAT. The FCC also decided to allow Comsat to compete directly in providing service to end users and made its composite rate policy discretionary.[8] In 1988, the Commission eliminated its "circuit distribution" guidelines.[9]

6. Comsat states further that the Commission, prompted by new Executive branch policies, decided to authorize separate satellite systems, subject to two restrictions: (1) satellite transponder capacity could only be sold or leased for communications not interconnected with the public switched telephone network ("PSTN"), and (2) all systems were required to complete consultations with INTELSAT and obtain authorizations from one or more foreign authorities.[10] In 1990, the Executive Branch revised its policy to allow separate satellite systems to interconnect up to 100 64-kbps equivalent circuits per system to the PSTN, and stated that its goal was the elimination of all PSTN restrictions by 1997. The Commission adopted those policies.[11] In 1993, the limit was raised to 1,250 64-kbps equivalent circuits per satellite,[12] and in 1994, to 8,000 64-kbps equivalent circuits via each separate system satellite.[13]

7. In 1992, Comsat filed an initial petition seeking greater flexibility.[14] According to Comsat, the present filing supplements the information in that filing and makes an immediate request for streamlined tariff relief.[15] With this supplemental petition for partial relief, Comsat submitted a document widely referred to as the "Brattle Report," which analyzes the present state of competition

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7 Modification of Policy on Ownership and Operation of U.S. Earth Stations, 100 F.C.C.2d 250 (1984).

8 Proposed Modification of the Commission's Authorized User Policy, 100 F.C.C.2d 177, 186 (1985), *aff'd*, Western Union International v. FCC, 804 F.2d 1280 (1986).

9 Policy for Distribution of United States International Carrier Circuits Among Available Facilities During the Post-1988 Period, 3 F.C.C. Rcd 2156, 2160 (1988).

10 Establishment of Satellite Systems Providing International Communications, 101 F.C.C.2d 1046 (1985).

11 Permissible Services of U.S. Licensed International Communications Satellite Systems Separate from the International Telecommunications Satellite Organization, 7 F.C.C. Rcd 2313 (1992).

12 Permissible Services of U.S.-Licensed International Communications Satellite Systems Separate from the International Telecommunications Satellite Organization, 9 F.C.C. Rcd 347 (1994).

13 Nineteenth INTELSAT Assembly of Parties, Document 19-3, ¶ 11(b).

14 *See* Communications Satellite Corporation, Petition for Rulemaking to Modify the Regulatory Treatment of Comsat World Systems' Multi-Year Fixed-Price Carrier-To-Carrier Contract-Based Switched-Voice Services, RM-7913.

15 *See*, Comsat Corporation Petition for Partial Relief From the Current Regulatory Treatment of Comsat World Systems' Switched Voice, Private Line, and Video and Audio Services, filed July 1, 1994.

in the trans-oceanic, facilities-based telecommunications market.[16] The Brattle Report asserts that Comsat now faces substantial, effective competition from fiber optic cables and separate satellite systems in all geographic and service market segments worldwide. The analysis concludes that Comsat's domestic monopoly on access to the INTELSAT system no longer confers upon Comsat any market power.

8. In support of its request for streamlined tariff relief, Comsat argues that it operates under increasing competitive disadvantages, particularly in regard to video and audio services.[17] It states that while its competitors do not even file tariffs, it must file tariffs on 45 days notice with detailed cost support, and must often address baseless challenges made by competitors. Comsat observes that this process can delay service to its customers, and claims that it needs more flexibility to respond quickly and decisively to consumer needs. Comsat alleges that grant of this petition will allow customers the fullest possible range of service choices and prices.

Discussion

9. In its supplemental petition, Comsat does not ask us to vacate our earlier conclusion that Comsat is dominant in the provision of space segment, television, and multi-purpose earth station services.[18] Instead, Comsat seeks relief from certain tariff requirements. Although Comsat styled its request as a petition for partial relief, and filed it as part of a rulemaking proceeding, we find that its request is more in the nature of a request for waiver of our tariffing rules, and will treat it as such.

10. The Commission may waive rules if good cause is shown.[19] In determining whether to waive a particular rule, the United States Court of Appeals for the District of Columbia has stated that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[20] Waiver is thus appropriate if special circumstances warrant a deviation from the general rule and such deviation would better serve the public interest than would strict adherence to the general rule.[21] We conclude below that Comsat has shown that a waiver of Sections 61.38 and 61.58 of our Rules subject to the certain conditions is

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16 *See* Hendrik S. Houthakker & The Brattle Group, Competition in the Market for Trans-Oceanic Facilities-Based Telecommunications Services (June 24, 1994).

17 Comsat adds that it is also subject to additional rules not applicable to other carriers. Those rules affect its corporate structure, its issuance of debt and equity, information flow among its affiliates, and its participation in INTELSAT. Comsat Petition at n.9.

18 International Competitive Carrier, 102 F.C.C.2d at 839.

19 *See* Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3.

20 WAIT Radio v. FCC, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

21 Northeast Cellular Tel. Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

justified.[22] Contrary to some commenters' claims, we do not need to conduct a rulemaking to waive a portion of our rules. Specifically, the Networks argue that granting Comsat's request for streamlining would effectuate rule changes to Sections 61.38 and 61.58. We cannot agree. As indicated below, we are waiving a portion of these rules, not eliminating them. Sections 61.38 and 61.58 continue to apply not only to Comsat for its television services, but also to local exchange carriers (LECs), particularly non-price cap LECs, under certain circumstances. Thus, a waiver of these rules for Comsat does not require a rulemaking proceeding.

11. Sections 61.38 and 61.58 of our rules establish the cost support information necessary to support a tariff filing and the notice period necessary prior to the effective date of a tariff. For Comsat, any proposed changes in rate structure, new service offerings, or rate increases must be made on 45 days' notice, and detailed cost data supporting the proposed increase must accompany such tariff. *See e.g.*, 47 CFR § 61.58(d)(2). Other carriers that are non-dominant are allowed significantly greater flexibility, filing tariffs on a much shorter one-day notice period without cost support data. Underlying the different notice and cost support requirements is our view that competition can effectively limit carriers ability to exercise market power, and therefore, limit carrier attempts to charge unjust and unreasonable rates.[23] Thus, when a carrier faces substantial competition, intensive scrutiny of the proposed rates is less necessary, making long notice periods and detailed cost support less necessary. In addition, when regulatory requirements are more extensive than necessary, they may hinder competition.[24]

12. We believe the relevant standard for waiving these tariffing requirements is whether the relevant geographic and product markets served by Comsat are substantially competitive so as to warrant waiver of the specified tariffing requirements for Comsat. Because we are treating Comsat's request as a waiver request, we will not depart from the market definitions and findings of dominance in the *International Competitive Carrier* decision, in analyzing whether the services offered by Comsat are sufficiently competitive. As noted above, that decision held the international telecommunications product markets in which Comsat is dominant to television, space segment, and multi-purpose earth station services.[25] Furthermore, we will consider each country as a separate geographic market.[26] Since Comsat World Systems no longer provides earth station service,[27] we need only now to consider

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22 *Streamlining the International Section 214 Authorization Process and Tariff Requirements* IB Docket No. 95-118, FCC 96-79, ¶¶ 77, 80-81 (released March 13, 1996) ("Streamlining Order"); See also *International Competitive Carrier at 843-844 (International tariffs filed by carriers regulated as non-dominant do not require economic or cost support and are presumed lawful).*

23 *See* Competition in the Interstate Interexchange Marketplace, 6 F.C.C. Rcd 5880, 5887 (1991), *modified*, 7 F.C.C. Rcd 2677 (1992).

24 See Motion of AT&T Corporation to be declared Non-dominant for International Service, Order, FCC 96-209, ¶ 8 (released May 14, 1996)("AT&T *International Reclassification Order").*

25 International Competitive Carrier, 102 F.C.C.2d at 822, n.20.

26 *Id.* at 828.

27 Comsat Corporation is only allowed to provide earth station service through subsidiaries fully separate from Comsat World Systems. Modification of Policy on Ownership and Operation of U.S. Earth Stations, 100 F.C.C.2d at 285.

whether to grant Comsat's request with respect to space segment service and television (audio and video) service on a country-by-country basis.

13. In the *Interexchange Competition Order*, we said that in evaluating the competitiveness of services provided by AT&T, it was appropriate to look at demand and supply elasticities, whether the dominant carrier had unique cost advantages, and whether it enjoyed special market power because of its sheer size or access to resources. In examining demand and supply elasticities, we looked at competitors' capacity, entry barriers, the sophistication of customers, their relative bargaining power in the marketplace, the carrier's market share, pricing trends, and loss of customers.[28] These are the same factors we examined in concluding that AT&T no loner possesses market power in the international services market and the interstate, domestic, interexchange market.[29] We believe these factors are relevant to our review whether Comsat faces substantial competition in the markets for space segment and television services.

A. Space Segment Services

14. The geographic and product markets defined in the Brattle Report do not completely coincide with the *International Competitive Carrier* market definitions. The Brattle Report speaks of a combined "wholesale" switched voice and private line services market.[30] We interpret this switched and private line wholesale market as analogous to our space segment market excluding video and audio.[31] The Brattle Report, however, does not define each country as a separate geographic market. It says that our country-by-country analysis was based on the necessity of acquiring agreements with foreign carriers, which is not necessary when providing "wholesale" services.[32] Comsat defines six geographic markets: (1) Europe/Mediterranean/Middle East, (2) Caribbean/Latin America, (3) East Asia/Oceania, (4) Rest of the Atlantic Ocean Region ("AOR"), (5) Rest of Latin America, and (6) Rest of the Pacific Ocean Region ("POR"). The Brattle Report defines the first three segments to include only countries already served by existing cable systems or explicitly listed as being served by planned fiber optic cables.[33] The last three groups are smaller low-traffic areas not easily accessible

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28 *Id.* at 5882, 5887-5892.

29 *AT&T International Reclassification Order; 11 FCC Rcd 3271 (1995).*

30 Brattle Report at 30. The Brattle Report actually claims that the distinction between switched voice and private line *retail* services does not exist in the "wholesale" trans-oceanic facilities-based telecommunications market. *Id.* at 29.

31 Comsat says that it does not serve most telecommunications end users directly, but rather is a "carrier's carrier." In that role, Comsat calls itself a "wholesale" supplier of trans-oceanic satellite circuits and transponder leases to customers that provide "retail" international communications services to end users. *Id.* at 3-4.

32 *Id.* at 32.

33 The Brattle Report refers to planned facilities as those which have been authorized by the FCC and/or are already under construction and will come on line before the end of 1996. Other future facilities are called potential facilities. *Id.* at n. 10.

through existing or planned cable systems. Comsat claims that the last three groups account for only a small fraction of total trans-oceanic telecommunications traffic to and from the U.S.[34]

15. Comsat states that it faces substantial effective competition from existing facilities in all geographic market segments. To Europe/Mediterranean/Middle East, Comsat says its market share of utilized capacity has dropped from over 60 percent in 1988 to less than 25 percent in 1993. To East Asia/Oceania, its share has purportedly dropped from over 80 percent to 26 percent. To Caribbean/Latin America, Comsat says the drop is from more than two-thirds to less than half.[35]

16. In the Rest of AOR, Rest of Latin America, and Rest of POR segments, Comsat admits that its market shares are still between 95 percent and 100 percent.[36] However, Comsat says that existing and planned separate satellite systems will be able to accommodate and compete for most or all of Comsat's traffic to these regions.[37] Comsat claims that the effects of such competition are discernible long before the commencement of service over new facilities because of presubscription marketing activities.[38] To capture some of the growth in these three market segments, or to be able to renew current long-term contracts in these areas when they expire, Comsat says it must *now* offer competitive rates. It also says it faces competition in these regions from the threat of entry of potential new separate satellites and from domestic satellites.[39] It also says that its practice of geographic rate non-discrimination effectively protects these geographic regions that face less competition from existing and planned cable systems.[40]

17. Finally, Comsat states that its customers are sophisticated, consisting primarily of U.S. international service carriers such as AT&T, MCI, and Sprint; multi-national corporations such as IBM; and major TV networks.[41] It states that supply elasticity is high due to a large amount of idle transmission capacity and advanced circuit multiplexing techniques. As a practical matter, Comsat says that the PSTN limitation on separate systems no longer exists because with digital circuit

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[34] *Id.* at 28. According to Comsat, 66 countries were accessible by cable as of 1993. In 1994, Comsat predicted that an additional 18 countries would be served. By the end of 1996, the Brattle Report states that a total of 97 countries will be served. *Id.* at 53.

[35] These measurements are based on utilized 64-kbps equivalent circuits to and from the U.S. *Id.* at 47-50. However, Comsat's share of AT&T's private line service to the Caribbean/Latin America region increased from approximately 40 percent to almost 70 percent in 1993. Comsat asserts that new fiber optic facilities that will become available later in 1994 will reverse that trend.

[36] *Id.* at 52, 64.

[37] *Id.* at 54-55, 92-93.

[38] *Id.* at 25, 54.

[39] *Id.* at 56-58.

[40] *Id.* at 11. "Geographic rate non-discrimination" is a Comsat policy under which rates for particular services apply uniformly to all areas of the world. This policy is required under Articles III(a) and V(d) of the INTELSAT operating agreement.

[41] *Id.* at 26.

multiplication technology, the 1,250 64-kbps circuits allowed per satellite can actually be transformed into as many as 5,000 voice circuits.[42] Comsat alleges that entry barriers are low, as evidenced by the number of new facilities being planned by new entrants and existing players in the market.[43] Comsat claims that it has had to lower its rates despite stable costs, even during the duration of its long-term contracts with its biggest customers.[44] It also claims to be offering many new services.[45] Comsat claims to have no special cost advantages or special access to resources because of its size.[46] According to Comsat, its major customers have significant bargaining power in determining the price and nature of services it offers them.

18. IDB, Orion, and PAS, competitors of Comsat, oppose Comsat's petition. PAS alleges that this is the wrong time for what Comsat has requested. It says that the government should keep Comsat's monopoly power in check during the transition to a privatized INTELSAT organization. IDB argues that the *International Competitive Carrier* decision requires us to examine the availability, geographic coverage, and cost of alternative services and whether they can actually meet customer needs before we apply streamlined regulation. According to IDB, we must determine that Comsat faces actual, substantial, and effective competition on a country-by-country and service-by-service basis for international message telephone service ("IMTS"), non-IMTS (private line), and television service. Orion alleges that in the satellite industry, demand elasticity is limited by long term contracts[47] while supply elasticity is low due to high barriers to entry. Orion claims that Comsat's market share in relevant geographic markets, together with low industry supply and demand elasticities, provide Comsat with market power to control prices and output in the satellite industry. Orion and PAS also suggest that Comsat has the ability to cross-subsidize its competitive services with profits from its monopoly services.[48] Finally, Orion claims that Comsat's immunity from U.S. antitrust regulation is an added competitive advantage, and that Comsat can borrow money at lower rates than its competitors using INTELSAT's triple-A rating. PAS adds that Comsat's competition from undersea cables is limited because of customers' preferences for diversification of facilities and because foreign administrations have sunk investment in INTELSAT.

19. PAS also claims that Comsat has a competitive advantage because of its service to "thin route" and remote areas. According to PAS, the Brattle Report states that Comsat's market share of switched voice traffic outside the high-density routes traversed by undersea cables is close to

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[42] Comsat Petition at 15.

[43] *Id.* at 23-24.

[44] Brattle Report at 98-100.

[45] Comsat Petition at 30.

[46] *Id.* at 30-33.

[47] *See also* PAS Opposition at 5.

[48] However, Orion fears that Comsat will cross-subsidize its switched services with monopoly revenues from private line and television service, while PAS is concerned that Comsat will cross-subsidize its video and private line services with monopoly revenues from switched services.

100 percent.[49] Fiber optic cables do not provide services to most countries of the world. IDB states that only 66 nations are reachable, while nearly 100 "thin route" countries in Africa, South America, the Middle East and elsewhere have no immediate access to fiber optic cable. Even where an undersea cable lands in a particular country, there is often no ubiquitous terrestrial service capable of serving all regions of that country.[50] PAS believes that Comsat should also structually separate switched and non-switched services. After such separation, PAS would not object to reduced regulation for video and private line services, but would object to reduced regulation for public switched services.

20. With particular regard to satellite competition, Orion argues that entry barriers include Comsat's special access, through INTELSAT, to the rapidly shrinking number of available fixed satellite service ("FSS") orbital positions, the high capital investment inherent in the nature of satellite communications, and the time-consuming and expensive Article XIV(d) INTELSAT process. PAS adds that the need for consultations and operating agreements for particular services to particular countries limits competition. IDB alleges that private line service is limited in the number of available transponders and scope of coverage, while IMTS circuits are limited to 1,250. In the case of PAS-1, IDB claims that almost all circuits are fully booked and cannot accommodate additional demand.

21. We find substantial competition in the space segment service market. Since 1985, available transmission capacity has dramatically increased on most routes with the introduction of satellite and cable systems that compete with INTELSAT. In addition to the INTELSAT system, three private satellite systems -- Orion, PanAmSat, and Columbia -- are in operation. In the AOR, TAT-8 - TAT-12 and Columbus 2 are in operation as common carrier cables and PTAT-1 is in operation as a private cable. Furthermore, TAT-13 is scheduled to be in operation in 1996. In the POR, GPT, HAW-4/TCP-3, HAW-5, PACRIM-East and -West, TCP-4 and TPC-5 (southern route) are in operation as common carrier cables and NPC is in operation as a private cable. Additionally, TPC-5 (northern route) is scheduled to be in operation in December 1996 as a common carrier cable and ALOHA is scheduled to be in operation in mid-1998 as a private cable. In the American and Caribbean Region, TAINO-CARIB, TCS-1, Americas-1, and Columbus-2 are in operation as common carrier cables and CANUS-1 is in operation as a private cable. As a result, capacity in all three regions has increased. Currently, in the AOR, 11,340 circuits (64-kbps) are available in a private cable and 136,080 circuits (64-kbps) are available in common carrier cables. In 1996, common carrier cable circuit capacity is scheduled to increase by an additional 60,480 circuits (64-kbps) and private cable capacity is scheduled to increase by an additional 120,960 circuits (64-kbps) in 1988. Currently, in the POR, 17,010 circuits are available in a private cable and 98,280 circuits (64-kbps) are available in common carrier cables. By December 1996, an additional 60,480 circuits (64-kbps) are scheduled to be available in a common carrier cable, and an additional 60,480 circuits (64 kbps) are scheduled to be available in a private cable in 1998. In the American and Caribbean Region, 94,500 circuits (64-kbps) are available in common carrier cables, and 60,480 circuits (64-kbps) are available in a private cable. By mid-1997, an additional 60,480 circuits (64 kbps) are scheduled to be available in this region in a common carrier and a private cable, respectively.

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[49] *Id.* at 5-6; *citing* Brattle Report at 62.

[50] IDB Comments at 8.

22. The Brattle Report indicates 66 countries that were accessible by fiber optic cable as of 1993, 18 additional in 1994, and 97 that will have service by the end of 1996.[51] 1995 Year-end Circuit Status Reports filed with the Commission show 76 countries reached by U.S. carriers (AT&T, MCI, Sprint, and Hawaiian Telephone) only by satellite, and 103 countries by cable and satellite or only cable.[52] Traffic to the satellite only countries generated about $1.041 billion in revenues for IMTS using 1993 data.[53] This is 8.45 percent of the approximately $12.320 billion total revenues generated for IMTS to foreign points that year by U.S. carriers.[54] The other 91.55 percent of revenues came from service to foreign points served by U.S. carriers either by cable and satellite, cable only, or in some cases other radio facilities.

23. Looking at demand and supply elasticities, cost advantages, and access to resources, the competitive circumstances faced by Comsat in the 103 markets served both by cable and satellite justify waiver of our rules to permit streamlined tariff relief for Comsat. All parties agree that Comsat's space segment customers are sophisticated users who engage in long-term planning and ordering. Existing trans-Atlantic and trans-Pacific cable systems appear to have enough idle capacity to absorb all of Comsat's service to these regions.[55] Idle capacity on trans-Caribbean cables could absorb most of Comsat's switched voice and private line services to the Caribbean/Latin America segment.[56] Supply elasticity, meaning the ability of additional suppliers to offer service if Comsat raised its prices, is clearly indicated with this much excess capacity. No customer of Comsat, except for IDB, a customer/competitor, has objected to a waiver for wholesale space segment services. Comsat's customers seem to be price-sensitive, and they have the ability to use a supplier other than Comsat for many, if not most, space segment services. With regard to cross-subsidies, we found in 1992 that competition from fiber optic submarine cable facilities and separate systems appeared adequate to dissuade INTELSAT, and thus Comsat, from cross-subsidizing competitive services with PSTN services.[57] We further noted a trend among users to have fiber optic facilities restored with similar facilities in case of an outage. We found that it was doubtful even then that INTELSAT's satellite-based monopoly in the provision of international PSTN could form the basis for the type of cross-subsidization of competitive services that PAS fears.

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51 Brattle Report at Exhibit HSH-2.1.

52 AT&T Year-end 1995 Circuit Status Report (filed April 30, 1996); GTE Hawaiian Telephone Company Year-end 1995 Circuit Status Report (filed April 1, 1996); MCI Year-end 1995 Circuit Status Report (filed April 1, 1996); Sprint Year-end Circuit Status Report (filed April 15, 1996). With these reports, MCI and Sprint filed requests that the reports be withheld from public inspection pursuant to Sections 0.457 and 0.459 of the Commission's Rule, 47 C.F.R. §§ 0.457, 0.459.

53 *See* 1994 FCC International Traffic Report.

54 *Id.* If using total US carrier retained revenue number, then the satellit-only route market was $535 million, 6.66% of total $8.033 billion for all foreign points, either by cable or satellite or both.

55 Brattle Report at 79, 87-90.

56 *Id.* at 79.

57 Communications Satellite Corporation, 7 F.C.C. Rcd. 3430, 3433 (1992).

24. We are not convinced that streamlining tariffs for Comsat's wholesale space segment transforms INTELSAT's triple-A bond rating into a significant threat to competition. A cost advantage such as a more favorable bond rating might allow a supplier to lower its prices below competitors' long-run average variable costs and thus drive competitors out of business. After competition is eliminated, the remaining supplier could raise its prices above competitive levels to reap monopoly profits. However, even when such a strategy is competitively feasible, it may not be economically profitable due to its high up-front cost. Moreover, such a strategy may not be chosen if more accommodating responses to competition are more profitable. Thus such entry-determining pricing to eliminate competition requires very specific circumstances in order to be probable. We have noted that cable systems create significant competition to Comsat's wholesale space segment services. Such cable systems have high sunk costs and low operating (variable) cost. Suppliers with these cost characteristics have low vulnerability to predatory pricing. Moreover, the long-term contracts prevalent for wholesale space segment services increase the present value cost of predatory pricing. For all of these reasons, we believe that the waiver of the specific tariffing rules we grant to Comsat for wholesale space segment services will not significantly increase the risk of pricing strategies that establish or preserve monopoly power.

25. As for the 80 countries that only receive satellite service, competition, if it exists at all, is less vigorous. Most of these countries can be termed "thin route" countries. Rates and terms of service may be less subject to competitive pressures than on cable-served routes. Separate satellite systems to date provide less competition than cable services, in part perhaps because orbital positions may be more difficult to procure than cable licenses. Thus, rates under streamlined regulation might, *inter alia*, tend to be higher in these areas than in cable-served areas.

26. Comsat has in this proceeding committed to geographic rate non-discrimination.[58] Rate non-discrimination should spread the benefits of competitive prices to "thin routes," since a given carrier will pay no more for "thin route" service than for service in highly competitive markets. Nevertheless, we are concerned that volume discounts may be used to prevent some "thin route" users from enjoying the benefits of geographic rate non-discrimination. For example, we are concerned that volume discounts could be structured so that carriers that subscribe to Comsat service *only* to "thin route" locations, while choosing to use cable service to other markets, might pay monopoly prices for their "thin route" traffic. We find that it is necessary to condition grant of this waiver on additional safeguards to ensure that competitive non-discriminatory prices are extended to "thin route" areas. Therefore, we will require Comsat as part of the reduced cost support it provides with all tariff filings to include an evaluation of the effect of the filing on "thin route" service.[59] Specifically,

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58 The Brattle Report refers to the "absence of significant geographic rate differentiation" as a policy that Comsat has voluntarily undertaken, particularly in connection with its recently renegotiated contracts with AT&T, MCI, and Sprint. Brattle Report at 99-100. We choose to call this practice "geographic rate non-discrimination." Comsat is required to follow this policy under Articles III(a) and V(d) of the INTELSAT operating agreement.

59 Attachment 1 to this order contains the list of countries that are now served directly or indirectly by U.S. carriers through use of cables. This Attachment reflects the most recent Monthly Circuit Status Reports filed by AT&T, GTE Hawaiian Telephone Company, MCI, and Sprint. All countries not on this list will be considered "thin route" countries. Comsat is directed to include this list in its international service tariffs. Comsat may update this list in its tariffs whenever U.S. carriers' Monthly Circuit Status Reports show that cable service has become available to additional countries.

Comsat should demonstrate that its tariff filings (1) do not restrict the availability of any service in "thin route" countries, and (2) have the same rate impact on "thin route" users as on high volume users. Any tariff filing that does not meet both these criteria shall not be subject to streamlined treatment. With these safeguards, we believe that the "thin route" markets can enjoy the same competitive benefits that reduced regulation can bring to cable-served markets.

27. Because this less burdensome tariffing requirement will provide adequate safeguards, we find that good cause has been shown for a waiver of Section 61.58 and Section 61.38, as described above, in the space segment service market. Marketplace forces will be able to supplement regulation and lighten the regulatory burden for both Comsat and the Commission. The waiver will help avoid delay in the availability of new services and price reductions. It will also serve the public well by reducing opportunities for gamesmanship, thereby reducing regulatory uncertainty in the marketplace.

B. *Television Service*

28. The remaining relevant service market is the video and associated audio services market. In this market, the Brattle Report does not distinguish geographically between countries accessible or not accessible by cable, because most of the competition for trans-oceanic video and audio service stems from separate satellite systems and, in some geographic areas, from regional and transborder domestic satellites.[60] Thus, Comsat defined the relevant geographic market segments as trans-Atlantic, trans-Pacific, and Caribbean/Latin America. Comsat said that its market share dropped from 100 percent in 1987 to 50 percent in 1988 and continues to trend downward in Caribbean/Latin America. In the trans-Atlantic segment, Comsat projected that its market share would be below 70 percent by 1995 and would continue downward in 1996. In the trans-Pacific market, Comsat predicted its market share will drop to 60 percent in 1994 and continue below this level through 1996.[61] Comsat stated that at the time it filed its supplemental petition, it faced substantial competition in all geographic market segments despite high market shares in some regions. Therefore, it considered then current market shares to be misleading, because when pre-subscribed facilities become operational, there will be an abrupt adjustment to market shares.[62] It claimed to have made major reductions in its rates for various video leases since 1985.[63]

29. Comsat says that now that undersea cables are fiber optic, they are also poised to carry significant amounts of video traffic internationally, but admits that video and audio services are not yet commonly carried on trans-oceanic cable systems.[64] Comsat recognized that satellites may be

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60 *Id.* at 31, 36.

61 *Id.* at 69. These figures are based on percentage of capacity utilized for television service. Based on percentage of revenues, Comsat's market shares appear even lower because Comsat receives lower revenues for inclined-earth orbit service in the trans-Pacific. *Id.* at 72. Furthermore, these figures only consider competitive services provided by PAS and Orion. *Id.* at 75.

62 *Id.* at 76-77.

63 *Id.* at 101-102.

64 *Id.* at 30.

the most cost-effective providers of point-to-multi-point service such as broadcasting. It further admits that satellites are very flexible (*e.g.*, new routes can be set up within hours) and do not have the problem that cable has in making the final "last mile" connection to the end user.[65] Comsat claims nevertheless that point-to-point television and audio services are vulnerable to competition from fiber optic cables.[66]

30. IDB and Orion point out that, according to the Brattle Report, Comsat has a 100 percent market share for trans-oceanic video services in the trans-Pacific region, nearly 90 percent in the trans-Atlantic region, and over 50 percent in the Caribbean/Latin America region. IDB says that only one separate satellite system is currently in operation, and it offers only a limited number of transponders with a limited geographic scope of coverage. Moreover, IDB argues that most existing international earth stations are designed to operate with, and are often "locked onto," INTELSAT satellites.[67] According to IDB and Orion, fiber optic cables are not an economical or practical substitute for satellite service used to provide video, videoconferencing, and television services. Orion maintains that satellite communications are the only way to provide multi-point services, and other modes are not viable alternatives because a ubiquitous, terrestrial broadband network does not exist. Orion concludes that both demand and supply elasticity are limited by lack of substitutes for video and audio services.

31. The users of satellite television service differ in their attitude toward streamlining, but all agree that they cannot rely on trans-oceanic cables for these services for various reasons including satellites' greater flexibility, lower cost, and shorter-term availability. The Networks oppose streamlining, maintaining that Comsat is still dominant in these services and is capable of shifting costs from other more competitive services to these services. They request a country-by country analysis of the INTELSAT system's market power. They state that separate systems do not yet provide effective competition to INTELSAT for international video service, particularly with regard to occasional video service. According to the Networks, separate systems lack world coverage, not only because of their positioning, but because they lack necessary landing rights and/or ground facilities to provide service in many countries. The Networks say that PAS does not have an occasional television offering "like" Comsat's, and that Columbia does not own its satellite capacity, but merely leases capacity from NASA. Therefore, the Networks argue, Columbia's capacity is subject to greater risk than if it owned its facilities.[68] Furthermore, the Networks maintain that Columbia's C-band system requires larger earth station antennas not conducive to satellite news-gathering ("SNG") operations. They also argue that Comsat's reliance on planned launches ignores the perils of launch delays and deployment failures. While they admit that a more competitive marketplace for international video transmission service eventually will evolve, they would delay regulatory relief to Comsat until that time. They argue that the reductions in Comsat's space segment rates do not reflect competition, but rather technological advances. The Networks conclude that Comsat should be content to seek Commission authority to advance tariff effective dates on a case-by-case basis as it has done on occasion in the past. They claim that the Brattle Report did not even

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65 *Id.* at n.53.

66 *Id.* at 31.

67 IDB Comments at 6 (Aug. 25, 1994).

68 Networks Comments at 11-12.

include occasional video service in its survey, and that those services should be exempt from streamlined tariff regulation on that basis alone. The Networks would also include an exemption for short-term full-period leases (one week or one month) because these are substitutes for occasional service.

32. Keystone and Reuters say they have observed Comsat playing "an increasingly competitive and supportive role in recent years, exhibiting a markedly greater willingness to accommodate the needs and specific objectives of its customers, and exhibiting an increasingly flexible approach in its provision of services."[69] They state that the Comsat proposal will provide Comsat's competitors and customers with adequate opportunity to challenge any proposed tariff terms they feel are unfavorable. They do ask that the reduced tariff support requested by Comsat include at least an explanation of the competitive purpose of tariff changes and a narrative statement of how the public interest will be served by the proposed change.

33. Satellites are clearly the primary means to relay international television services. While fiber optic cables have the technical capability to carry television, they do not possess the connectivity and operational flexibility that satellites can offer for SNG and program distribution functions. There is no evidence that U.S. carriers are making any inroads in this market through fiber optic cable. And although there are three U.S. separate systems now competing with INTELSAT for these services, these systems do not yet match the global reach of INTELSAT in terms of connectivity and transponder capacity. PanAmSat has three satellites; Orion has one satellite; and Columbia leases twelve transponders each on two satellites. In comparison, INTELSAT has 21 satellites. More importantly, more than 136 countries operate with INTELSAT through thousands of earth stations.[70] This network of earth stations gives INTELSAT a strong competitive advantage over competitors who cannot yet match it. U.S. competitors have difficulty in competing for customers with multipoint and SNG requirements to go beyond those countries they serve at this time. Finally, we note that the Brattle Report did not consider occasional use TV services.[71] Comsat has presented insufficient evidence that there is robust competition facing customers who need occasional video and audio services. To the contrary, the Brattle Report recognizes that little capacity on planned separate systems has been left available for *ad hoc* broadcast services and intermediate term services.[72]

34. In view of these factors and the comments in this proceeding, we find that Comsat has not demonstrated good cause for waiving our tariffing rules for television (video and related audio) services. We recognize that new information might be avilable and that circumstances may change in the future that would change this conclusion. If Comsat can demonstrate that circumstances have changed in the television services market since the close of this record in this proceeding, it may file a new request for streamlined treatment of its television services. Comsat should continue to comply

69 Keystone Comments at 2; Reuters Comments at 3.

70 There are 136 member countries in INTELSAT, and additional countries use the services of INTELSAT as non-member customers.

71 Brattle Report at n.3.

72 *Id.* at n.37.

with Sections 61.38 and 61.58 of the Commission's Rules for tariff filings concerning all television services.[73]

Conclusion

35. We find that a waiver of the tariff requirements in Sections 61.38 and 61.58 of our Rules is in the public interest for Comsat space segment services not only because our current tariff procedures are more extensive than necessary in this circumstance, but also because these requirements delay the availability of new services and possible price reductions and introduce regulatory uncertainty into the marketplace. For the reasons stated above, we find that good cause is shown for grant of a waiver to permit streamlining of our review of Comsat's tariffs for space segment services.[74] We do not at this time extend this waiver to video and associated audio services. The waiver we adopt today will serve the public well by reducing opportunities for gamesmanship by parties participating in the regulatory process and by minimizing unnecessary regulation. At the same time, we preserve our opportunity for both advance and subsequent scrutiny of Comsat's tariffs. The particular facts in this case make strict compliance with the tariffing rules inconsistent with the public interest.[75] If circumstances change in the future, we can revisit the appropriateness of this waiver.

36. As a condition of our waiver, we will require Comsat to file its space segment tariffs accompanied by supporting material at least sufficient to demonstrate that the filing (1) does not restrict the availability of any service in "thin route" countries, and (2) has the same rate impact on "thin route" users as on high volume users. Any tariff filing that does not meet both these criteria shall not be subject to streamlined treatment. Comsat must still comply with Section 61.33 of our rules which requires a concise explanation of the nature and purpose of the tariff filing. Comsat's space segment tariffs may be filed on fourteen days notice and will be presumed lawful for purposes of advance tariff review. Interested parties may file petitions against these tariffs pursuant to the time tables prescribed in our existing rules.[76] We will thus have an opportunity to identify and suspend and/or reject tariffs where necessary before they go into effect. We will reject any tariffs that conflict on their face with a statute or an agency regulation or order.

37. The presumption of lawfulness for purposes of advance review does not change the substantive standards to be used in evaluating a tariff in a complaint proceeding or tariff investigation. Post-effective review procedures, including the complaint process and our authority to initiate investigations and find tariffs unlawful after they take effect, will continue to apply as before. In addition, we retain authority to institute at any time investigations of Comsat tariffs after they become

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73 If Comsat can demonstrate that circumstances have changed in the television services market since the close of this record, it may file a new request for streamlined treatment of its television services. We delegate to the International Bureau and Common Carrier Bureau authority to act on any such request..

74 Our analysis also in part relies on the planned complete elimination of PSTN interconnection restrictions on separate satellite systems by 1997. We may revise the waiver granted herein if this change cannot be implemented through INTELSAT.

75 Northeast Cellular Tel. Co. v. F.C.C., 897 F.2d 1164 (D.C. Cir. 1990).

76 Under our rules, petitions relating to tariffs filed on fourteen days notice must be filed within six days after the tariff is filed. *See* 47 C.F.R. § 1.773(a)(2)(i).

effective and to declare tariffs unlawful. We will also adjudicate in the complaint process claims of unlawful actions by Comsat.

Ordering Clause

38. Accordingly, IT IS ORDERED, pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, that a waiver of Sections 61.38 and 61.58 of the Commission's Rules, 47 C.F.R. §§ 61.38, 61.58, IS GRANTED to Comsat Corporation, through its World Systems line of business, as described herein, and that Comsat Corporation, through its World Systems line of business, is allowed to make tariff filings as described, *supra*, on fourteen days notice and with a presumption of lawfulness for its INTELSAT space segment services.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

ATTACHMENT 1

Albania
Anguilla
Antigua
Argentina
Aruba
Australia
Austria
Bahamas
Bangladesh
Barbados
Belarus
Belgium
Belize
Bermuda
Brazil
Brunei
Canada
Cayman Islands
Chile
China
Colombia
Croatia
Cuba
Cyprus
Czech Republic
Denmark
Djibouti
Dominican
Republic
Dominica
Ecuador
Egypt
El Salvador
Estonia
Fiji
Finland
France
French Antilles
Germany
Gibraltar
Greece
Grenada
Guam
Guyana
Haiti
Hong Kong
Hungary
Iceland
India
Indonesia
Ireland
Israel
Italy
Jamaica
Japan
Kazakhstan
Korea South
Kyngstan
Latvia
Lebanon
Luxembourg
Malaysia
Mexico
Montserrat
Morocco
Nepal
Netherlands
Netherlands
Antilles
New Zealand
Norway
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Poland
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Russia
Saudi Arabia
Singapore
Slovakia
Slovenia
South Africa
Spain
Sri Lanka
St. Kitts & Nevis
St. Lucia
St. Vincent
Sweden
Switzerland
Syria
Taiwan
Thailand
Tortola
Trinidad & Tobago
Tunisia
Turkey
Ukraine
United Kingdom
Uruguay
Uzbekistan
Venezuela
Vietnam
Yugoslavia